

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	FINAL ORDER
098917-41I BY WILLIAM G. AND)	
LAREE L. WILLIAMS)	

* * * * *

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the September 24, 1997, Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER

Subject to the terms, conditions, restrictions, and limitations listed below, Beneficial Water Use Permit 098917-41I is hereby granted to William G. And LaRee L. Williams to appropriate 1.6 cubic feet per second (718.1 gallons per minute) up to 120 acre-feet of ground water by means of a well at a point in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ OF Section 11. The use will be irrigation of 22.50 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 22.00 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 32.50 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, and 22.5 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, all in Section 11, for a total of 99.5 acres. The period of use shall be from May 1 through October 15, inclusive of each year.

CASE # 98917

A. This water right is associated with Statements of Claim 41I-W001048, 41I-W001049, 41I-W001050, 41I-W001051, 41I-W001052, 41I-W001073, and 41I-W132532. They have overlapping places of use.

B. This right is subject to Section 85-2-505, MCA, requiring all wells be constructed so they will not allow water to be wasted or contaminate other water supplies or sources, and all flowing wells shall be capped or equipped so the flow of the water may be stopped when not being put to beneficial use. The final completion of the well(s) must include an access port of at least .50 inch so the static water level of the well may be accurately measured.

C. The appropriator shall install an in-line flow meter approved by the regional manager at a point in the delivery line approved by the regional manager to record the flow rate and volume of water diverted. Water must not be diverted until the required measuring device is in place and operating. On a form provided by the Department, the appropriator shall keep a written record of the measurements which shall be submitted by November 30 of each year. The regional manager may also request measurement records at other times during the year. Failure to submit reports may be cause for revocation of modification of a permit or change. The records must be sent to the Water Resources Regional Office at 21 North Last Chance Gulch, PO Box 201601, Helena, MT 59620-1601. Ph: (406)449-0944. The appropriator shall maintain the measuring device so it always

operates properly and measures flow rate accurately.

C. The issuance of this right by the Department shall not reduce the appropriators' liability for damages caused by the appropriators' exercise of this right. Nor does the Department in issuing the right in any way acknowledge liability for damage caused by the appropriators' exercise of this right.

D. If at any time after this right is issued, a written complaint is received by the Department alleging that diverting water from this source is adversely affecting a prior water right, the Department may make a field investigation of the project. If during the field investigation the Department finds sufficient evidence supporting the allegation, it may conduct a hearing in the matter allowing the appropriators to show cause when the right should not be modified or revoked. The Department may then modify or revoke this right to protect existing rights or leave this right unchanged if the hearing officer determines no existing water rights are being adversely affected.

NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for

certification to the reviewing district court, the requesting party must make arrangements with the Department of Natural Resources and Conservation for the ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the oral proceedings to the district court.

Dated this 27th day of October, 1997.



Jack Stults, Administrator
Department of Natural Resources
and Conservation
Water Resources Division
P.O. Box 201601
Helena, Montana 59620-1601
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record, first class mail, at their address or addresses this 28th day of October, 1997, as follows:

William G. & LaRee L. Williams
319 Lone Mountain Rd.
Toston, MT 59643-9746

Fred Hathaway
202 Muddy LN
Toston, MT 59643

Vivian A. Lighthizer,
Hearing Examiner
Department of Natural
Resources & Conservation
P.O. Box 201601
Helena, MT 59620-1601

Willis Hossfeld, Jr
43 Hossfeld LN
Toston, MT 59643

Dan Hunsaker & Sons Ranch Co.
101 Hossfeld LN
Toston, MT 59643

Terri McLaughlin, Manager
helena Water Resources
Regional Office
21 N Last Chance Gulch
Helena, MT 59620-1601

Nancy Andersen, Chief
Water Rights Bureau
Department of Natural
Resources & Conservation
P O Box 201601
Helena, MT 59620-1601

Diane McDuffie
Diane McDuffie
Hearings Assistant

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	PROPOSAL
098917-41I BY WILLIAM G. AND)	FOR
LAREE L. WILLIAMS)	DECISION

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on August 26, 1997, in Townsend, Montana, to determine whether a beneficial water use permit should be granted to William G. and LaRee L. Williams (Applicants) for the above-entitled application under the criteria set forth in Mont. Code Ann. § 85-2-311(1) and (5) (1995).

APPEARANCES

Applicants appeared at the hearing by and through William G. Williams.

Objector Dan Hunsaker & Sons Ranch Co. appeared at the hearing by and through Ruth Hunsaker and Delbert Hunsaker. Objector Fred Hathaway and Objector Willis Hossfeld, Jr. appeared at the hearing in person. Doris Hossfeld appeared at the hearing as a witness for Mr. Hossfeld.

EXHIBITS

Applicants offered six exhibits for the record. All were accepted without objection except the photographs in Applicants'

Exhibits 5 and 6.

Applicants' Exhibit 1 is a copy of a well log for a well completed in December of 1973. The well was drilled for Kenneth Kitto as an irrigation well. This well is now owned by Fred Hathaway.

Applicants' Exhibit 2 consists of three pages entitled *Relevant Factual Evidence*. As the title implies this exhibit sets forth evidence concerning the proposed well, existing wells, and objectors existing water rights.

Applicants' Exhibit 3 consists of seven pages and is the Criteria Addendum required for each application for a beneficial water use permit.

Applicants' Exhibit 4 is a duplicate of Applicants' Exhibit 2.

Applicants' Exhibit 5 consists of 13 photographs taken by Dennis Williams in April, 1997. Objector Hunsaker objected to these photographs because they merely reflect the spring irrigation was under way.

Applicants' Exhibit 6 consists of ten photographs taken by Dennis Williams in August, 1997. Objector Hunsaker objected to these photographs because that's what they do in August is cut the hay.

Hunsaker's objections are sustained and the photographs are taken at face value with no weight given to this evidence.

Objector Hunsaker offered four exhibits for the record. All

were accepted without objection.

Objector Hunsaker's Exhibit A is a chart prepared by Ruth Hunsaker setting forth Applicants' water right numbers; source and flow rate; point of diversion; place of use; acres irrigated; and time of use.

Objector Hunsaker's Exhibit B is a copy of a draft certificate of water right for Beneficial Water Use Permit 009912-41I.

Objector Hunsaker's Exhibit C is a copy of an SCS aerial photograph of Section 11, Township 4 North, Range 1 East, Broadwater County.¹

Objector Hunsaker's Exhibit C is a copy of the same aerial photograph with the well owners and locations of wells designated.

Objector Hunsaker's Exhibit D consists of two pages and is a copy of the Abstract of Water Right Claim 41I-W-001173.

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does make the following:

FINDINGS OF FACT

1. An application for beneficial water use permit in the name of and signed by William F. And LaRee L. Williams was received by the Department of Natural Resources and Conservation (Department) on October 8, 1996 at 11:25 a.m. (Department file.)

¹Unless otherwise stated all legal descriptions are located in Township 4 North, Range 1 East, Broadwater County.

2. Pertinent portions of the application were published in the *Townsend Star* on January 23, 1997. Additionally, the Department served notice by first-class mail on individuals and public agencies which the Department determined might be interested in or affected by the proposed appropriation. Three timely objections were received by the Department. Applicants were notified of the objections by a letter from the Department dated March 12, 1997. (Department file.)

3. Applicants propose to appropriate 1.6 cubic feet per second (718.1 gallons per minute) up to 120 acre-feet of ground water by means of a well at a point in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 11. The proposed use is irrigation of 22.50 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, 22.00 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 32.50 acres in the SE $\frac{1}{4}$ SE $\frac{1}{4}$, and 22.5 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$, all in Section 11, for a total of 99.5 acres. The proposed period of use is from May 1 through October 15, inclusive of each year. This water is supplemental and would be used on land already irrigated under Statements of Claim 41I-W001048, 41I-W001049, 41I-W001050, 41I-W001051, 41I-W001052, 41I-W001073, and 41I-W132532. (Department file.)

4. Applicants have proven by a preponderance of evidence the proposed means of diversion, construction, and operation of the appropriation works are adequate. The proposed means of diversion is a well, approximately 275 feet deep, drilled to industry standards using steel casing and screens, if necessary. The pump would be a vertical turbine design with either a submersible or above ground electrical motor. The discharge

would be enclosed and connected to a center pivot. The center pivot would be equipped with drop tubes and low pressure spray type nozzles to limit wind drift and evaporation losses. The horsepower of the pump would be determined when the pumping level is known but it is anticipated to be in the 50 to 70 horsepower range. The center pivot would be approximately 1,175 feet long and would extend to the south and east lines of Section 11. The flow rate of 1.6 cubic feet per second would be limited by system design. (Department file.)

5. The proposed use of water, irrigation, is a beneficial use of water. Mont. Code Ann. § 85-2-102(2)(a) (1995). The soils to be irrigated, Mussel loam and Brocko silt loam are Class II when irrigated and suitable for alfalfa, wheat, and sugar beets. The precipitation zone at 10 to 14 inches per year, indicates the additional 12 inches of applied irrigation water would be adequate for any suitable crops. Applicants determined the proposed flow rate using the Natural Resources Conservation Service's recommendation of 6.2 to 7.0 gallons per minute per acre. (Department file.)

6. Applicants have proven by a preponderance of evidence they have a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. Applicants own the land. (Department file and testimony of William Williams.)

7. Applicants have proven by a preponderance of evidence there are unappropriated waters in the source of supply at the

proposed point of diversion at times when the water can be put to the use proposed, in the amount Applicants seek to appropriate and that the amount requested is reasonably available during the period in which Applicants seek to appropriate. There are irrigation wells located in all directions within a mile of the proposed well site. All of these wells are completed between 240 feet and 260 feet except the well located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 11 which was completed at 432 feet, but is pumped at 240 feet. All of these wells show a similar pattern of subsurface formation with layers of clay and gravel. All of the wells have been producing since completion and are still producing and operating the original irrigation systems at the original pressures and flow rates, with the exception of the Hathaway well located east of the proposed well in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 12, approximately three-quarters mile from the proposed well. There is an obstruction problem with this well which does not allow the pump to be placed lower than 142 feet. It is therefore reasonable to conclude that a well completed at the proposed point of diversion, at the proposed depth, would more than likely produce more than the proposed flow rate of 1.6 cubic feet per second (718.1 gallons per minute) of ground water. (Department file and testimony of William Williams and Fred Hathaway.)

8. Applicants have proven by a preponderance of evidence the water rights of a prior appropriator will not be adversely affected. Applicants have two wells and Mr. William's cousin has a well within Section 11. Applicants' two existing wells are

one-half mile and approximately two-thirds mile from their proposed well. The cousin's well is approximately one-half mile from Applicants' proposed well. These wells would be affected more quickly than any other wells. Applicants' well #3 is approximately one-third mile from Applicants' well #2. Those wells have shown no well interference from being too close together. It is most likely the proposed well would have no adverse impact on other wells at a greater distance than Applicants' own wells. (Testimony of William Williams.)

Objectors Hunsaker and Hossfeld testified they were concerned that wells in the area are reducing the amount of surface flow and subirrigation of their property. There is no record of water rights for Dan Hunsaker & Sons Ranch Co. in the Department records. There were four water rights in the Department's records for Willis Hossfeld, Jr. Three are for surface rights and one is for a stock water well 50 feet deep. Objector Hathaway has five water rights. Three are ground water rights and two are surface water statements of claim. Two of the wells are located approximately two and one-half miles from Applicants' proposed well. The well nearest Applicants' proposed well site, approximately three-quarters of a mile, is 250 feet deep with perforations from 143 to 232 feet. As mentioned previously, there is an obstruction in this well that prevents placing the pump deeper than 142 feet. When first drilled, the static water level in this well was nine feet below land surface. In June, 1996, the static water level was 18 feet deep.

(Applicants' Exhibit 1, Department records, and testimony of Ruth Hunsaker, Doris Hossfeld, and Fred Hathaway.)

There is no question the surface water and the shallow subsurface water has diminished. However, the cause is most likely the cessation of flood irrigation on hundreds of acres in the area rather than direct reduction as a result of the wells in the area. When the area was flood irrigated, much of the water entered the ground to surface later as springs and shallow subsurface flow. When everyone turned to sprinkler systems, that recharge did not occur and the creeks and subsurface flow diminished. (Department file and testimony of William Williams.)

Concerning the lower static water level in Objector Hathaway's well, a lowering of the static water level in itself is not an adverse effect as long as the well owner can continue to use that well. Neither can the obstruction in the casing of that well be the basis for limiting the development of the aquifer. Mont. Code Ann. § 85-2-401(1) (1995).

9. Applicants have proven by a preponderance of evidence the proposed use would not interfere unreasonably with other planned uses for which a permit has been issued or for which water has been reserved. There are no pending projects on this source for which permits have been issued or for which water has been reserved under state law. (Department file.)

10. No objections relative to water quality were filed against this application nor were there any objections relative to the ability of a discharge permit holder to satisfy effluent

limitations of his permit. (Department file.)

Based upon the foregoing Findings of Fact and the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing, and all substantive procedural requirements of law or rule have been fulfilled; therefore, the matter was properly before the Hearing Examiner. See Findings of Fact 1 and 2. Mont. Code Ann. §§ 85-2-307 and 309 (1995).

2. Applicants have met all the criteria for issuance of a beneficial water use permit. See Findings of Fact 3 through 10. Mont. Code Ann. § 85-2-311 (1995).

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations listed below, Beneficial Water Use Permit 098917-41I is hereby granted to William G. And LaRee L. Williams to appropriate 1.6 cubic feet per second (718.1 gallons per minute) up to 120 acre-feet of ground water by means of a well at a point in the NW¼SE¼ of Section 11. The use will be irrigation of 22.50 acres in the NE¼SE¼, 22.00 acres in the NW¼SE¼, 32.50 acres in the SE¼SE¼, and 22.5 acres in the SW¼SE¼, all in Section 11, for a total of 99.5 acres. The period of use shall be from May 1 through October 15, inclusive of each year.

A. This water right is associated with Statements of

Claim 41I-W001048, 41I-W001049, 41I-W001050, 41I-W001051, 41I-W001052, 41I-W001073, and 41I-W132532. They have overlapping places of use.

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C. The issuance of this right by the Department shall not reduce the appropriators' liability for damages caused by the appropriators' exercise of this right. Nor does the Department in issuing the right in any way acknowledge liability for damage caused by the appropriators' exercise of this right.


D. If at any time after this right is issued, a written complaint is received by the Department alleging that diverting water from this source is adversely affecting a prior water right, the Department may make a field investigation of the project. If during the field investigation the Department finds sufficient evidence supporting the allegation, it may conduct a hearing in the matter allowing the appropriators to show cause when the right should not be modified or revoked. The Department may then modify or revoke this right to protect existing rights or leave this right unchanged if the hearing officer determines no existing water rights are being adversely affected.

NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Exceptions must specifically set forth the precise portions of the proposed decision to which the exception is taken, the reason for the exception, authorities upon which the party relies, and specific citations to the record. Vague

assertions as to what the record shows or does not show without citation to the precise portion of the record will be accorded little attention. Any exception containing obscene, lewd, profane, or abusive language shall be returned to the sender. Parties may file responses to any exception filed by another party. The responses must be filed within 20 days after service of the exception and copies must be sent to all parties. No new evidence will be considered.

Dated this 24th day of September, 1997.


Vivian A. Lighthizer
Hearing Examiner
Water Resources Division
Department of Natural Resources
and Conservation
P.O. Box 201601
Helena, MT 59620-1601

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record, first class mail, at their address or addresses this 24th day of September, 1997, as follows:

William G. & LaRee L. Williams
319 Lone Mountain Rd
Toston, MT 59643-9746

Willis Hossfeld, Jr
43 Hossfeld Ln
Toston, MT 59643

Fred Hathaway
202 Muddy Ln
Toston, MT 59643

Dan Hunsaker & Sons Ranch Co
101 Hossfeld Ln
Toston, MT 69643

Terri McLaughlin, Manager
Helena Water Resources
Regional Office
21 N Last Chance Gulch
P.O. Box 201601
Helena, MT 59620-1601

Nancy Andersen, Chief
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P.O. Box 201601
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Diane McDuffie
Administrative Assistant